



BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36227]

David L. Durbano—Continuance in Control Exemption—Washington Eastern Railroad, LLC

David L. Durbano (Durbano), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Washington Eastern Railroad, LLC (WERR), upon WERR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Washington Eastern Railroad, LLC—Change in Operator Exemption—Eastern Washington Gateway Railroad Company, Docket No. FD 36226. In that proceeding, WERR seeks an exemption under 49 CFR 1150.31 to assume operations over approximately 107.8 miles of track extending between milepost 1.0 near Cheney, Wash., and the end of the track at milepost 108.8 in Coulee City, Wash. (CW Branch), and over approximately 5.9 miles of track that connects with the CW Branch at Geiger Junction near Medical Lake, Wash. (Geiger Spur).

The earliest this transaction may be consummated is October 25, 2018, the effective date of the exemption (30 days after the verified notice was filed). Durbano states that he intends to consummate the transaction on or after the effective date of the transaction established by the Board in Docket No. FD 36226, which is also October 25, 2018.

Durbano will continue in control of WERR upon WERR's becoming a Class III rail carrier, while remaining in control of six other Class III carriers: Texas & Eastern Railroad, LLC, Wyoming and Colorado Railroad Company, Inc., Southwestern Railroad, Inc., Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, L.C., and Saratoga Railroad, LLC.

Durbano certifies that: (1) The rail lines to be operated by WERR do not connect with any other railroads in the Durbano corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect these rail lines with each other or with any other railroad in the Durbano corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than October 18, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36227, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our website at www.stb.gov.

Decided: October 5, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

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